

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 252	DATE	1/15/2003
CASE TITLE	Jerome Bressertt vs. David Gerszewski		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Plaintiff's counsel is ordered to file in this Court's chambers, on or before January 27, 2003, an amendment to the Complaint limited to amending complaint ¶¶ 3 through 7 appropriately. If no appropriate amendment were to be timely filed, this Court will be constrained to dismiss this action for lack of subject matter jurisdiction.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SN courtroom deputy's initials	U.S. DISTRICT COURT CLERK 03 JAN 15 PM 4:08 01-07-0000 Date/time received in central Clerk's Office	number of notices JAN 16 2003 date docketed Mey docketing deputy initials 1/15/2003 date mailed notice SN mailing deputy initials	Document Number 2
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

JAN 16 2003

JEROME E. BRESSERT, et al.,)
)
Plaintiffs,)
)
v.) No. 03 C 252
)
DAVID J. GERSZEWSKI,)
)
Defendant.)

MEMORANDUM ORDER

Jerome Bressert, Jason Carter, Leon Bressert and Travis Cochran have just filed suit against David Gerszewski ("Gerszewski"), invoking federal subject matter jurisdiction on diversity of citizenship grounds. This memorandum order is issued sua sponte to require plaintiffs' counsel to cure the flawed jurisdictional allegations in the Complaint.

Although this action is framed in terms of seeking both arbitration under the Federal Arbitration Act (9 U.S.C. §4) and a declaratory judgment pursuant to 28 U.S.C. §2201,¹ plaintiffs' knowledgeable counsel recognizes that the invocation of those federal statutes does not implicate a federal question such as to bring Section 1331 jurisdiction into play. But when counsel looks properly to Section 1332 instead, he mistakenly identifies the place of residence rather than the state of citizenship of each plaintiff (see Complaint ¶¶3 through 6), while Gerszewski's

¹ All further references to Title 28's provisions will simply take the form "Section--."

London, England residence is spoken of without identifying him either as a citizen of a state (Section 1332(a)(1)) or as a citizen or subject of a foreign state (Section 1332(a)(2)). As taught by Held v. Held, 137 F.3d 998, 1000 (7th Cir. 1998), quoting Guaranty Nat'l Title Co. v. J.E.G. Assocs., 101 F.3d 57, 59 (7th Cir. 1996):

Of course, allegations of residence are insufficient to establish diversity jurisdiction. It is well-settled that "[w]hen the parties allege residence but not citizenship, the court must dismiss the suit."

But this Court sees no point in sticking plaintiffs with the cost of another \$150 filing fee if, as would seem to be the case, the defects identified here are readily curable.

Accordingly plaintiffs' counsel is ordered to file in this Court's chambers, on or before January 27, 2003, an amendment to the Complaint limited to amending Complaint ¶¶ 3 through 7 appropriately. To keep Gerszewski fully informed, counsel is also ordered to send copies of this memorandum order and of the amendment to his counsel if known or, if not known, to Gerszewski himself. If no appropriate amendment were to be timely filed, this Court will be constrained to dismiss this action for lack of subject matter jurisdiction.



Milton I. Shadur
Senior United States District Judge

Date: January 15, 2003